

CONSTITUTIONAL LAW - ON LINE

PRESENTED BY:

DPS - Law Enforcement Academy
Santa Fe, New Mexico

Date: _____

GOALS

- Students will have a basic understanding of the role of constitutional law in our society.
- Students will understand the importance of the Bill of Rights and how they are applied to the states through the Fourteenth Amendment.
- Students will gain an understanding of how constitutional amendments are interpreted by case law.

OBJECTIVES

Upon completion of this course, students will be able to:

- Identify the particular amendments of the US Constitution most applicable to law enforcement.
- Provide a simple summary of each of the amendments that affects law enforcement.
- Know why the Bill of Rights (first ten amendments) was added to the Constitution.
- Explain why the Fourteenth Amendment was added to extend constitutional rights to the states.
- Explain why a state constitution can give more rights than the United States Constitution.

SOURCES

- New Mexico Criminal and Traffic Manual.
- New Mexico Statutes Annotated.
- State and federal case law.

ESTIMATED TIME

Two hours

PREPARED BY

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DATE APPROVED _____**ACCREDITATION NUMBER** _____

INTRODUCTION

We often hear about the Constitution and our Constitutional rights. The last thing we do prior to becoming a police officer is to take an oath to the Constitution.

- Both the federal and state constitutions can be found in the New Mexico Criminal and Traffic Law Manual.

Why the Constitution is so important

- The Constitution provides for a system of government based upon one extraordinary principle: consent of the governed.
- It may be the first time in history where a group of people (55 people in Philadelphia in 1787) gathered together and designed a government. It begins with the words, WE THE PEOPLE
- America has the first written Constitution. Constitutions similar to it have been adopted in over one hundred countries, including Germany and Japan after World War II.
- The Constitution really has two parts: the Constitution and the Bill of Rights. As police officers our focus is on the Bill of Rights. The Bill of Rights was added to limit the ability of government (including law enforcement) to interfere with the rights and liberties of citizens.

The Constitution

- It's mainly a blueprint for government. It is designed so that no one person or group can become too powerful.

The Bill of Rights

- The people of the United States refused to ratify the Constitution unless it provided a guarantee in writing of their rights. Ten amendments were added, which became known as the Bill of Rights.
- A number of these amendments directly affect law enforcement. (First, Fourth, Fifth, Sixth, and Eighth Amendments)
- These amendments are usually one paragraph or one sentence long. The Courts interpret the constitutional amendments to give us

guidance.

- Court interpretation is an ongoing process. One Court may rule that a police action is constitutional today. In the future another Court may affirm (uphold) the present decision, modify it, or even reverse it. This is why people refer to the Constitution as a living document which is always changing and being reevaluated.

Lesson learned:

The driving force and philosophy behind the constitutional amendments is respect for the rights of the individual and the rights of the accused. This philosophy is reflected in many of our judicial decisions.

Is there more than one Constitution?

- Each state has its own Constitution. The United States Constitution sets the standard for individual rights. A state can interpret its constitution to give more rights (but not less rights) to its citizens.
- The reason we focus on New Mexico law is that our state traditionally gives more rights to citizens, including the accused.
- We will now briefly discuss the Constitution beginning with the First Amendment.

The First Amendment

- Religion. Although we have freedom of religion, there are limitations. Polygamy, for example, is unacceptable. With certain exceptions, a church cannot use drugs. If a person, on religious grounds, refuses medical attention for his or her child, that person can be prosecuted.
- Right to assemble. This is a part of the First Amendment but the government may regulate the time and place of assembly. For example, demonstrators may be permitted to march on a sidewalk but not to shut a nearby business down.
- Freedom of Speech.

News item: Supreme Court Rules for Funeral Protesters

The Topeka, Kansas based Westboro Baptist Church has gained notoriety by picketing at funerals of fallen warriors with signs claiming “God Hates You,” “Thank God for Dead Soldiers,” and “God Hates Fag Soldiers.” They believe God is punishing America for its tolerance of

homosexuality.

The United States Supreme Court, citing the First Amendment, upheld their right to do so. Albuquerque Journal, March 3, 2011.

Not all Speech is Protected by the First Amendment

- One cannot yell “fire!” in a crowded theatre.
- There are also state statutes regarding defamation and libel.
- Facebook users beware! An officer saying improper things that might affect his or her department, even though after hours, can face possible disciplinary action.

Suppose someone wants to take your picture?

NOTE:

Suppose a person on a public street wants to take a picture of an officer making an arrest. Can the officer also arrest the person taking a picture of him? (no)

News item: Charges Dismissed in Cameraman Case

A cameraman was standing **outside** a crime scene in Albuquerque. A police officer told him to leave. The cameraman was arrested for Refusal to Obey, a city ordinance.

The Metropolitan Court Judge noted that a person has a right to be on a public street, even to watch a crime scene, as long as they don’t interfere with officers. There was no interference or obstruction in this case. The charge was dismissed.

Albuquerque Journal, July 2, 2008.

Role of the News Media

- The news media, by pointing out corruption and other issues, performs an important role. They also have been very supportive of law enforcement.
- Sometimes, however, we make mistakes and the news media can be pretty rough on us. The answer is not to become frustrated or upset. The remedy is to acknowledge mistakes and take corrective action.

NOTE:

No one wins if the news media is treated like an adversary.

The Second Amendment

- The right to keep and bear arms.

- We will review a number of court decisions and state statutes to better understand the present status of this amendment.
- In 2008 the United States Supreme Court held that a sweeping ban on handguns in Washington D.C. was unconstitutional.
- In 2010 the United States Supreme Court held that the second amendment guaranteed a personal right to have a gun for self-defense in the home. Gun possession and use can still be regulated.

Laws on carrying a handgun in New Mexico can be found in Chapter 30, Article 7: Weapons and Explosives.

What is the law on carrying a concealed loaded firearm? NMSA 1978, Section 30-7-2

It is unlawful to carry a concealed loaded firearm, with certain exceptions:

- In a person's residence or on his or her property,
- in a private vehicle,
- by a peace officer in accordance with the policies of his or her agency.
- by a person who has a license under Concealed Handgun Carry Act, NMSA 1978, Section 29-19-1.

What is the law on carrying an unloaded firearm?

- Nothing in NMSA 1978, Section 30-7-2 prevents the carrying of any unloaded firearm.

Firearms and Open Carry

There are a few exceptions but generally people can "open carry" handguns in New Mexico. Some people are using this right to challenge police officers.

Facts:

Around 2008, a man in Alamogordo went into a theatre with a handgun on his belt. Some patrons were concerned and the manager called police. An officer, holding the man by the arm, escorted him outside where the man put his handgun into the trunk of his vehicle.

The officer's act of holding the man by the arm was held to be an illegal seizure. The man sued the Alamogordo Police Department and won approximately \$20,000.

Note:

An officer in this situation might be better off contacting the manager. The manager can

tell the person he or she can stay only if the handgun is taken elsewhere. If the person doesn't get the message, he or she can be cited or arrested for trespassing.

News item: 30 Defy Ruidoso Gun Ban

As many as 30 people carrying guns were allowed inside Ruidoso Village Council chambers in defiance of the Mayor's ban on weapons inside city buildings.

The Mayor said the ban was aimed at protecting the public and village employees but critics said it violated state law and the state constitution.

At least half a dozen local police officers were present inside and outside of council chambers. One of the residents, previously ordered to leave council chambers because he had a handgun, has a pending lawsuit against the Mayor. Albuquerque Journal, September 15, 2011.

There also have been reports of citizens (with handguns on their hips) filming officers at routine traffic stops in New Mexico. Some states have reacted in ways that may surprise Second Amendment advocates.

News item: California Gov. Enacts Ban on Open Handgun Carrying

Governor Jerry Brown signed a measure that bans the open carrying of handguns in California. Top California law enforcement officials supported the legislation. Governor Brown, according to the Los Angeles Times, said he "listened to the police chiefs." Fox News, October 10, 2011.

Buses and Deadly Weapons

Facts:

An Albuquerque City bus driver noticed a passenger carrying a gun. She was uneasy and called the police. The passenger asserted that he had the right to carry a concealed unloaded handgun on the street, in his vehicle, and it wasn't illegal to carry it on the bus.

Has a crime been committed? (yes)

Answer:

It is unlawful for any person without prior approval from the (bus) company to board or attempt to board a bus while in possession of a firearm or other deadly weapon upon his person or effects and readily accessible to him while on the bus. NMSA 1978, Section 30-7-13.

- Under this statute, what is a "bus"?

Answer:

"Bus" means any passenger bus, coach or other motor vehicle having a seating capacity of not less than fifteen passengers . . . when used for the purposes of carrying passengers or cargo for hire. NMSA 1978, Section 30-7-11.

The offender has committed a misdemeanor offense.

Guns and Alcohol

Facts:

Early Monday morning, shortly after midnight, defendant entered a convenience store to buy coffee. By law, the store could not sell alcohol at that time. Defendant was not intoxicated nor did he go into the liquor area of the store. He had an unconcealed, loaded firearm in his back pocket. State v. Lake (1996).

A deputy sees this and makes an arrest. Will this be a valid arrest?

- NMSA 1978, Section 30-7-3
Unlawful carrying of a firearm in an establishment licensed to dispense alcoholic beverages consists of carrying a loaded or unloaded firearm . . . (fourth degree felony)
- What does “licensed premises” mean? This applies to bars and lounges. Does it include retail establishments as well? (yes)
- “Dispense” alcoholic beverages. This refers to serving alcohol by the drink. Does it also refer to unbroken packages? (yes)
- If a store contains a department that sells liquor, is the entire store “off limits” to firearms? (yes)

Answer:

Court of Appeals said this was a valid arrest. The licensed premises include “the contiguous areas . . . connected by indoor passageways of a structure . . . which are under the direct control of the licensee . . . That means the entire premises is off limits to someone entering with a firearm. Defendant violated the law when he entered the premises with a firearm. NMSA 1978, Section 60-3A-2.

Helpful learning lesson:

A person commits armed robbery in a store that sells alcohol. In addition to armed robbery, the person could be charged with carrying a firearm into a licensed liquor establishment.

Can a person with a concealed carry permit carry a firearm in a licensed liquor establishment?

Answer:

The law permits a person with a concealed-carry permit to carry a firearm provided that the sale of alcohol is for consumption off the premises. NMSA 1978, Section 30-7-3.

What about a certified police officer?

Answer:

A certified police officer can do so following the policies of his or her agency.

What about a restaurant that sells alcohol?

Answer:

In 2010 the law was amended to permit a person with a concealed-carry permit to carry a concealed firearm in a restaurant licensed to sell only beer and wine and that derives no less than sixty percent of its annual gross receipts from the sale of food for consumption on the premises, unless the restaurant has a sign posted, in a conspicuous location at each public entrance, prohibiting the carrying of firearms . . . NMSA 1978, Section 30-7-3.

The purpose of this amendment:

This allows people with concealed carry permits to go into restaurants (with a beer and wine license) where the primary source of income is food.

A reminder:

This statute doesn't prohibit the consumption of alcohol while carrying a concealed firearm. Negligent Use of a Deadly Weapon, on the other hand, may be applicable in that it prohibits carrying a firearm while under the influence of an intoxicant or narcotic. NMSA 1978, Section 30-7-4.

Proving a person is "under the influence" is a higher standard than proving "consumption" of alcohol.

Governor Richardson encouraged the state legislature to prohibit (in future legislation) the consumption of alcohol while carrying a concealed firearm.

Handguns and Juveniles

- NMSA 1978, Section 30-7-2.2:
- Unlawful possession of a handgun by a **person** consists of a person knowingly having a handgun in his or her possession or knowingly transporting a handgun.
- What is the meaning of the word "person"?

Answer:

A "person" (under this section) means an individual who is less than nineteen years old.

- At what age can an individual carry a handgun?

Answer:

An individual older than nineteen years of age can possess a firearm.

- What exceptions exist for a juvenile under the legal age to carry a firearm?

Answer:

1. Attendance at a hunter's or handgun safety course,
2. Using the handgun for target shooting at an established range,
3. Engaged in an organized competition involving the use of a handgun,
4. Legal hunting or trapping activities,

5. Traveling, with an unloaded handgun in his or her possession, to or from an activity described above, and
6. on property under the control of the person's parent, grandparent or legal guardian and the person is being supervised by his or her parent, grandparent or legal guardian.

Schools and Deadly Weapons

It's legal to carry firearms in your vehicle but what if you're on school grounds?

- Does an age limit apply? If so, what is it?

Answer:

A person can lawfully carry a deadly weapon, on school premises, in a private automobile . . . for lawful protection of the person or another person or property, if the person is older than nineteen years of age. NMSA 1978, Section 30-7-2.1.

- Is there a difference between public and private schools?

Answer:

This statute applies to public schools only.

Felons & Firearms

Can a convicted felon carry a firearm?

Answer:

It is unlawful for a felon to receive, transport or possess any firearm or destructive device in this state. NMSA 1978, Section 30-7-16.

NOTE:

Prohibition against carrying firearms applies to felony convictions only, with one exception. The exception is domestic violence. There is a federal law that a person convicted of domestic violence, misdemeanor or felony, cannot carry a firearm for life.

How many years must go by before a convicted felon can carry a firearm?

Answer:

Ten years after a person has completed a sentence or period of probation for the felony conviction.

- A person is arrested for a felony offense. Will this person be prohibited from carrying a firearm? If so, for how long?

Answer:

This is a trick question. A person arrested for a felony offense (unless there are restrictions by the court) can still carry a firearm. Once **convicted**, however, the person cannot carry a firearm for ten years or until the sentence is served.

- A fifteen year old is tried as a juvenile and sent to a juvenile detention facility. An officer stops him when he is age 20 and he has a handgun on the front seat. Can he be charged as a felon with a firearm?

Answer:

Another trick question! A juvenile tried as a juvenile will not have a felony conviction. Only adults and juveniles tried as adults can be convicted of a felony.

What does negligent use of a deadly weapon mean? NMSA 1978, Section 30-7-4

Negligent use of a deadly weapon consists of:

- Discharging a firearm into any building or vehicle so as to knowingly endanger a person or his or her property,
- Carrying a firearm while under the influence of an intoxicant or narcotic,
- Endangering the safety of another by handling or using a firearm or other deadly weapon in a negligent manner,
- Discharging a firearm within 150 yards of a dwelling building, not including abandoned or vacated buildings on public lands during hunting seasons. NMSA 1978, Section 30-7-4. (Petty Misdemeanor)

Note:

Another charge similar to negligent use of a deadly weapon is NMSA 1978, Section 30-3-8: Shooting at dwelling or occupied building; shooting at or from a motor vehicle.

Deadly Weapons

Note:

The legal definition of deadly weapon lists a number of deadly weapons and finishes by saying, “or any other weapons with which dangerous wounds can be inflicted.” NMSA 1978, Section 30-1-12 (B).

Is a pocket knife a deadly weapon?

Facts:

A sixteen-year-old worked at a furniture store where all employees were supplied with pocketknives for opening boxes. One day at Taos High School a teacher saw him with his pocketknife. The DA’s office charged him with possession of a deadly weapon on school premises. NMSA 1978, Section 30-7-2.1.

The legal definition of a deadly weapon includes some knives (switchblade, bowie, etc.) but not a pocket knife. It notes “or any other weapons with which dangerous wounds can be

inflicted.” NMSA 1978, Section 30-1-12 (B). Using this, the DA argued that a pocket knife, regardless of a person’s actual or intended use, is a deadly weapon. What’s going to happen in this case? State v. Nick R. (2009).

Answer:

Supreme Court of New Mexico said we must look at intent to decide whether an accused had the intent to carry or use a particular object as a weapon or not. To say that a pocketknife is automatically a deadly weapon would mean a person who carried one to work, on a fishing trip, or virtually anywhere else, would be carrying a deadly weapon, in violation of Section 30-7-2.

The decision on whether a pocketknife is a deadly weapon will be done on a case by case basis. Given the facts of this case, the pocketknife was not a deadly weapon. Schools can still set policies and take appropriate remedies.

Is a BB gun a deadly weapon?

FACTS:

Defendant, in Dona Ana County, pointed a BB gun at a woman’s stomach and demanded money. She quickly complied. Robbery or armed robbery? For defendant the stakes are high: if robbery it’s three years but if armed robbery it’s nine years. State v. Fernandez (2007).

- Is a BB gun a deadly weapon?

Answer:

Court of Appeals held that depending upon how it’s used – and ultimately it’s a question for the jury – it can be a deadly weapon. A blast from a BB gun at close range can be serious. Also, holding the gun as he did, the gun could have been used as a bludgeon or club. Given facts such as these, a BB gun can be a deadly weapon.

The Third Amendment

- This Amendment has to do with the military forcing you to put soldiers in your house. It was a big issue when the British were here but since they’re not likely to return we probably won’t be seeing this Amendment again.

The Fourth Amendment

- The Search & Seizure Amendment. No other amendment has as much impact on law enforcement. An entire class is devoted to this Amendment alone.

The Fifth Amendment

- This includes the right against self-incrimination, double jeopardy,

and the right to a Grand Jury. The chief focus of this amendment – interrogations – will be discussed in a separate class.

The Sixth Amendment

- Right to a speedy and public trial.
Adults, for example, need to go to trial within six months. This is known as the “six months rule.” The actual time is 182 days. An extension can be granted by the Court.
- Impartial jury from district where crime was committed (venue). Jury verdicts in criminal cases must be unanimous.
- Right to confront witnesses.
- Right to be informed of charges against you.
- Right to assistance of counsel for people who are accused.

Note:

The fifth and sixth amendments are the two amendments most used when there is an interrogation. The fifth amendment provides for a right against self-incrimination and the sixth amendment provides for the right to an attorney.

The Eighth Amendment

- No excessive bail.
- No cruel or unusual punishment.

Example: Will not permit slow torture, starving a prisoner to death. Lethal injection is the usual means of execution.

The Fourteenth Amendment

- Before the 14th Amendment, the Bill of Rights applied only to the federal government and federal officers.
- After the Civil War, it became apparent that the defeated states were not applying constitutional rights to all their citizens.
- This amendment – a very important amendment – applies the Bill of Rights to state and local officers.

CONCLUSION

The United States is unique in that it was founded upon a Constitution which includes a Bill of Rights. Our government is designed, perhaps more than any other, to protect the rights of individuals. Many Judges, given the choice between individual rights or the convenience of law enforcement officers, will decide in favor of the individual.

